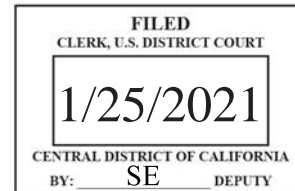


ORIGINAL

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6 *Attorneys for Relators*



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11 **[UNDER SEAL],**

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13 v.

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16 Defendant.

CASE NO. CV 18-08311-ODW(AS)

**NOTICE OF MOTION AND
MOTION TO WITHDRAW AS
COUNSEL; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: February 22, 2021

Time: 1:30 p.m.

Judge: Hon. Otis D. Wright II

Ctrm: 5D

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NOTICE OF MOTION**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

Please take notice that on February 22, 2021 at 1:30 p.m., before the Honorable Otis D. Wright II, counsel for Relator, the law firm of Cotchett, Pitre, & McCarthy, LLP, hereby will move the Court for an order granting leave to withdraw as counsel for Relator IONM, LLC. Good cause exists pursuant to Civil Local Rule 83-2.3.2 and California Rule of Professional Responsibility 1.16, subdivision (b) for the Court to grant this motion because Relator seeks to pursue a course of action not warranted, has made it "unreasonably difficult" to represent Relator due to Relator causing a breakdown in communication with counsel, and there is an inability to work with new counsel for Relator, Ms. Alice Chang. Further the withdrawal of Cotchett, Pitre & McCarthy does not prejudice the Defendants or other litigants, and it does not harm the administration of justice. The matter is under seal, there are no hearings or other proceedings set in this action, no trial date has been scheduled, and Relator has retained new counsel.

As of the filing of this matter, Relator and its new counsel, Ms. Chang, have not made clear whether Relator opposes the Motion.

The Motion is based upon this notice, the accompanying Memorandum of Points and Authorities, the Declaration of Justin T. Berger, and all other papers filed in this matter.

Dated: January 15, 2021

COTCHETT, PITRE & MCCARTHY, LLP

By: /s/ Justin T. Berger

JUSTIN T. BERGER
SARVENAZ J. FAHIMI

Attorneys for Relator

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Court's Local Civil Rules and the California Rules of Professional Conduct good cause exists for withdrawal as counsel for Relator. Relator has demanded that counsel at Cotchett, Pitre & McCarthy ("CPM") pursue a course of action that CPM has indicated is not warranted. Further, Relator has made it "unreasonably difficult" to represent it due to a breakdown in communication with counsel. CPM is also unable to work effectively with recently added counsel for Relator, Ms. Alice Chang.

The requested withdrawal does not prejudice the Relator or other litigants, and will not harm the administration of justice. The matter is under seal, Relator has been given notice of the withdrawal, retained new counsel, there are no hearings or other proceedings set in this action, and no trial date has been scheduled. The Government has been given notice of the withdrawal.

II. ARGUMENT

"The decision to grant or deny a motion to withdraw as counsel for a party is within the Court's discretion." *Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Group, Inc.*, No. CV 14-03053 MWF(VBKx), 2015 U.S. Dist. LEXIS 183359, *8 (C.D. Cal. Oct 23, 2015). Four factors are generally weighed in evaluating withdrawal as counsel: (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may result to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Id.* at *8-9 (citations omitted).

Further, "[a] motion to withdraw as counsel may only be made upon 'written notice given reasonably in advance to the client and to all other parties who have appeared in the action.' [] It is especially important that reasonable notice be given to moving counsel's client because, upon withdrawal, the client will be forced to proceed pro se or appoint new counsel through a substitution of attorney." *Stewart v. Boeing*

1 Co., No. CV 12-05621 RSWL, 2013 U.S. Dist. LEXIS 87064, *2-3 (C.D. Cal. June 19,
2 2013) (citing L.R. 83-2.9.2.1 and L.R. 83-2.9.2.2.).

3 Additionally, federal courts in California look to the standards of professional
4 conduct required of members of the State Bar of California in determining whether
5 counsel may withdraw. *See Stewart*, 2013 U.S. Dist. LEXIS 87064, at *3-4 (citations
6 omitted); *U.A. Local 342 Joint Labor-Mgmt. Comm. v. S. City Refrigeration, Inc.*, No.
7 C-09-3219 JCS, 2010 U.S. Dist. LEXIS 42700, *8 (N.D. Cal. Mar. 31, 2010).

8 California Rule of Professional Conduct 1.16, subdivision (b) (effective June 1,
9 2020), entitled “Declining or Terminating Representation” provides in relevant part:

10 Except as stated in paragraph (c) [requiring approval by tribunal
11 where necessary], a lawyer may withdraw from representing a
12 client if:

13 (1) the client insists upon presenting a claim or defense in
14 litigation, or asserting a position or making a demand in a
15 non-litigation matter, that is not warranted under existing
16 law and cannot be supported by good faith argument for
an extension, modification, or reversal of existing law;

17 ...

18 (4) the client by other conduct renders it unreasonably
19 difficult for the lawyer to carry out the representation
effectively;

20 ...

21 (7) the inability to work with co-counsel indicates that
22 the best interests of the client likely will be served by
23 withdrawal;

24 ...

25 Cal. Rule Prof. Conduct 1.16 (June 1, 2020).

26 As detailed in the following sections, all four factors weigh in favor of granting
27 withdrawal.

28 ///

A. The Grounds for Withdrawal

Here, under the Rules of Professional Conduct, good cause exists to grant withdrawal because Relator seeks to present claims, positions, and demands that are not warranted under existing law; Relator has made it “unreasonably difficult” for CPM to represent Relator effectively; and Relator recently appointed Ms. Chang as counsel, with whom there is an inability to work effectively. Declaration of Justin T. Berger (“Berger Decl.”) in Support of Motion to Withdraw as Counsel for Relator ¶ 2. In order to protect Relator’s interests, and not risk unnecessarily divulging protected attorney-client communications, CPM will only elaborate upon the reasons outlined upon request of the Court.

B. Relator Has Been Given Timely Notice of Withdrawal and Has Representation

Pursuant to Local Rule 83-2.3.4, Relator was given written notice of CPM’s intent to withdraw on December 22, 2020 and January 5, 2021. Berger Decl. ¶ 3. In providing notice to Relator, CPM indicated it would wait until January 15, 2021 to withdraw in order to provide Relator opportunity to secure counsel. Berger Decl. ¶ 3.

On January 4, 2021, CPM was informed that Relator retained Alice Chang as counsel, and Ms. Chang filed a notice of appearance in this matter on or about January 4, 2021. Berger Decl. ¶ 4. On January 4, 2021, CPM also informed the government that CPM would be withdrawing as counsel. On January 8, 2021, CPM, Relator and counsel for the government agencies participated in a conference call where CPM’s withdrawal was further discussed. Berger Decl. ¶ 5. Counsel reiterated on January 8 that all client file materials would be forwarded to Ms. Chang. Berger Decl. ¶ 5. The bulk of the file was provided electronically on the same day. Berger Decl. ¶ 5.

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C. Relator and Other Parties Will Not Be Prejudiced and Withdrawal Will Not Interfere with the Administration of Justice

The case remains under seal until June 30, 2021. Defendants have not been served, nor has litigation commenced. Relator has already obtained new counsel. *See* Berger Decl. ¶ 4. No deadline or matter is imminent, and trial has not been set. Accordingly, neither Relator, the Government, nor Defendants will be prejudiced. Further, because the matter is under seal and the Government is continuing to investigate the claims, there is no interference with the administration of justice.

D. The Case Will Not Be Delayed

As outlined in Section C, a trial date has not been set, the matter is under seal, and the Government is continuing its investigation. There are no discovery, expert or other pre-trial deadlines approaching. CPM's withdrawal will not require continuance of any dates.

CPM has provided ample notice to Relator that CPM is seeking leave to withdraw. Further, Relator already has new counsel and the matter will not be delayed. CPM has met all Local Rule requirements and has established good cause for withdrawal based upon the reasons outlined above under the California Rules of Professional Responsibility.

III. CONCLUSION

For the foregoing reasons, Cotchett, Pitre & McCarthy respectfully requests the Court grant its Motion for Withdrawal as Counsel.

Dated: January 15, 2021

COTCHETT, PITRE & MCCARTHY, LLP

By: /s/ Justin T. Berger

JUSTIN T. BERGER
SARVENAZ J. FAHIMI

Attorneys for Relator

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CASE NO. CV 18-08311-ODW(AS)

**DECLARATION OF JUSTIN T.
BERGER IN SUPPORT OF
MOTION TO WITHDRAW AS
COUNSEL**

Date: February 22, 2021

Time: 1:30 p.m.

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DECLARATION OF JUSTIN T. BERGER

I, JUSTIN T. BERGER, declare as follows:

1. I am an attorney duly admitted to practice before this Court, and am a partner with the law firm of Cotchett, Pitre & McCarthy, LLP ("CPM"), counsel for Relator in this matter. I make this Declaration of my own personal knowledge and, if called to testify as a witness, could and would competently testify to the matters stated herein.

2. Without unnecessarily divulging protected communications, in my opinion Relator has insisted that our firm present claims and take positions that are unwarranted. Moreover, Relator has made it "unreasonably difficult" for CPM to represent Relator effectively. Finally, Relator has recently appointed Ms. Alice Chang as counsel, and we have experienced an inability to work effectively with Ms. Chang.

3. Pursuant to Local Rule 83-2.3.4, Relator was given written notice of CPM's intent to withdraw on multiple occasions, including on December 22, 2020 and January 5, 2021. In providing notice to Relator, CPM indicated it would wait until January 15, 2021 to withdraw in order to provide Relator opportunity to secure counsel.

4. On January 4, 2021, CPM was informed that Relator had retained Ms. Chang as counsel. On that same day, CPM informed the Government attorneys investigating this matter that CPM would be withdrawing as counsel.

5. On January 8, 2021, CPM, Relator and counsel for the Government participated in a conference call where CPM's withdrawal was further discussed. Counsel reiterated on January 8 that all client file materials would be forwarded to Ms. Chang. The bulk of the file was provided electronically on the same day.

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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct. Executed on this 15th day of January,
3 2021 at Burlingame, California.

4
5 /s/ Justin T. Berger

6 JUSTIN T. BERGER
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1 Upon consideration of the Motion to Withdraw as Counsel, the Court hereby
2 GRANTS the Motion and ORDERS:

- 3 1. Good cause exists pursuant to Civil Local Rule 83-2.3.2 and California
4 Rule of Professional Responsibility 1.16 for counsel at Cotchett, Pitre &
5 McCarthy to withdraw as counsel for Relator IONM LLC.
6 2. The withdrawal will be deemed final pursuant to the date of this ORDER.
7

8 IT IS SO ORDERED.

9 Dated: _____

10 HON. OTIS D. WRIGHT II
11 UNITED STATES DISTRICT JUDGE
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